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FILED  
STATE OF ALASKA  
APPELLATE COURTS

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JAKE THOMAS WAGNER,  
Appellant,

v.

STATE OF ALASKA,  
Appellee.

CLERK APPELLATE COURT

BY \_\_\_\_\_  
DEPUTY CLERK

Court of Appeals No. A-13769

FL Cir 12-21-20 Jm

Trial Case No. 2NO-20-00090CR

### NOTICE TO THE COURT OF WRITTEN TRIAL COURT ORDER

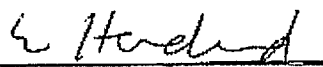
#### VRA AND APP. R. 513.5 CERTIFICATION

I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any offense unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court. I further certify, pursuant to App. R. 513.5, that the font used in this document is Arial 12.5 point.

Jake Wagner filed a bail appeal on December 14, 2020. On December 17, 2020, the trial court *sua sponte* issued a written bail order in connection with the bail order on appeal before this Court. Mr. Wagner attaches a copy of the trial court's order to this notice.

ALASKA PUBLIC DEFENDER AGENCY

DATE: December 22, 2020

  
ERIC J. HEDLAND (0105027)  
ASSISTANT PUBLIC DEFENDER

I certify that on December 22, 2020 a copy of this document and its attachments was emailed to:  
John Earthman (2NO DAO)  
By: SM

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
SECOND JUDICIAL DISTRICT AT NOME

STATE OF ALASKA,

Plaintiff,

v.

JAKE WAGNER,

Defendant.

Case no. 2NO-20-00090CR

ORDER ON WAGNER'S BAIL APPLICATION FILED  
SEPTEMBER 14, 2020

Having reviewed Wagner's bail arguments and considering the nature and circumstances of the alleged crime committed, the court finds that Wagner's bail proposal does not adequately address the factors laid out in AS 12.30.011(b).

**PROCEDURAL HISTORY:**

On July 10, 2020, a grand jury indicted Jake Wagner on three counts of sexual abuse of a minor in the first degree, a count of attempted sexual abuse of a minor in the first degree, and two counts of misconduct involving a controlled substance in the third degree.<sup>1</sup> The abuse allegedly came to light when M.O., being fostered by Wagner and his wife Sandra in an independent CINA matter, disclosed to Sandra that Wagner had been having sexual intercourse (oral and vaginal) with the minor.<sup>2</sup> At the time, both Wagner

<sup>1</sup> Indictment 7/10/20.

<sup>2</sup> Complaint 2/21/20, Pg. 2.

and Sandra were educators and behavior counselors at Nome Beltz High School.<sup>3</sup> According to M.O., the abuse happened during the summer when Sandra was went to Oregon for the summer.<sup>4</sup>

When Sandra confronted Wagner about the abuse, Wagner allegedly denied that the abuse occurred and flew out of Nome at the last minute.<sup>5</sup> When Nome PD was unable to locate Wagner, it requested a warrant. On February 21, 2020, a warrant was issued in the amount of \$50,000.<sup>6</sup> By March 28, 2020, that warrant had been served and a committing magistrate in Anchorage tried to arraign Wagner. Wagner refused to appear for his arraignment, and the magistrate maintained the bail amount set in the warrant.<sup>7</sup> Presently, Wagner's bail remains at \$50,000 performance bond.

#### LEGAL STANDARD:

AS 12.30.011(b) states in pertinent part:

(b) If a judicial officer determines that the release under (a) of this section will not reasonably ensure the appearance of the person or will pose a danger to the victim, other persons, or the community, the officer shall impose the least restrictive condition or conditions that will reasonably ensure the person's appearance and protect the victim, other persons, and the community.

Furthermore, AS 12.30.011(c) states:

(c) In determining the conditions of release under this chapter, the court shall consider the following:

- (1) the nature and circumstances of the offense charged;
- (2) the weight of the evidence against the person;
- (3) the nature and extent of the person's family ties and relationships;
- (4) the person's employment status and history;

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Warrant 2/21/20.

<sup>7</sup> Commitment order dated 3/28/20.

- (5) the length and character of the person's past and present residence;
- (6) the person's record of convictions and any pending criminal charges;
- (7) the person's record of appearance at court proceedings;
- (8) assets available to the person to meet monetary conditions of release;
- (9) the person's reputation, character, and mental condition;
- (10) the effect of the offense on the victim, any threats made to the victim, and the danger that the person poses to the victim;
- (11) any other facts that are relevant to the person's appearance or the person's danger to the victim, other persons, or the community; and
- (12) the pretrial risk assessment provided by a pretrial services officer, if available.

The Supreme Court has clarified that “[the trial judge] is in a far better position than an appellate court to assess the evidence and to determine, in the first instance, what alternatives are available, and the amount of bail that should be required”.<sup>8</sup>

#### ANALYSIS:

##### Appearance:

In the vast majority of cases that come before the undersigned, there is not even an attempt to flee by the arrestee. Yet, as alleged, this is simply not the case here. When his wife confronted him with M.O.’s allegations of sexual abuse, Wagner allegedly fled to Oregon. Thus, even accepting that Wagner voluntarily returned to Alaska—keeping in mind he did not return to Nome—Wagner would not have had to return to Alaska had he not fled in the first instance.

Moreover, as stated at the bail hearing conducted on October 29, 2020, Wagner’s proposal is to place him in an extended stay hotel in Anchorage<sup>9</sup>—stepping stones from

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<sup>8</sup> *Gilbert v. State*, 540 P.2d 485, 486 (Alaska 1975) discussing *Reeves v. State*, 411 P.2d 212 (Alaska 1966) (holding that an indigent defendant does not have an absolute right to be released on his personal recognizance prior to trial), approving the rationale of *Pilkinton v. Circuit Court*, 324 F.2d 45 (8th Cir. 1963) (holding that the accused does not necessarily have the right to have his bail set in an amount that he can post).

<sup>9</sup> 10/29/20, 1:55:59.

Alaska's only truly international airport, an airport which had to be an important component in his alleged flee to Oregon. Suffice it to say, appearance has a very real significance in setting bail here.

**Protection of the victim, other persons, and the community:**

To the extent that Wagner argues that an ankle monitor will protect against further attempts to flee the State, the court still has grave concerns over the amount of protection an ankle monitor can afford given the allegations here.

During the bail hearing, Wagner proposed electric monitoring ("EM") while he stayed in a hotel room in Anchorage.

However, during the testimony of a witness from the company that administers the ankle bracelet, the court had questions of the witness:

Court: Sergeant Wainwright you indicated that you reviewed the complaint in this case?

Sergeant Wainwright: I have, your Honor.

Court: And you're aware the allegation is that Mr. Wagner was having sex with an underage person that he was in the care and trust of in his house. You're aware of those allegations?

Sergeant Wainwright: Yes, your Honor.

Court: So if Mr. Wagner is in this extended-stay hotel room having sex with an underage minor, what kind of notification is that ankle monitor going to give?"

Sergeant Wainwright: It's not going to be able to give me any type of notification, your Honor."<sup>10</sup>

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<sup>10</sup> Bail Hearing, October 29, 2020, 1:58:49 PM.

The court acknowledges that there are some types of crimes where ankle monitoring affords some measure of protection of the public. For example, someone accused of continually driving from bar to bar, getting intoxicated, and then driving home would be a prime candidate for an ankle monitor. In such a case, even if that person were to get intoxicated in their home, at least that person would not be getting behind a wheel and driving.

But this case is different. Wagner is accused of repeatedly sexually abusing a minor in the confines of a private place—where he lives. Moreover, the court's questioning of Mr. Wainwright clearly reveals serious concerns that ankle-monitoring will not detect a situation where Wagner invites a minor into his hotel room in Anchorage. Finally, Mr. Wainwright's answer, that the ankle monitor is "not going to be able to give me any type of notification", confirmed the court's concern. In sum, given the allegations, an ankle monitor proposal affords absolutely no pretrial protection to the youth of any Alaskan community.

**Other factors in AS 12.30.011(b):**

Though true that Mr. Wagner has no prior criminal record, the nature and circumstances alleged in this case—considering that men having sex with underage victims is disproportionally greater in rural areas such as Nome contrasted with other Alaskan metropolitan areas—is a factor in setting bail here.

The court acknowledged the extent of any family ties and relationships. Except that here, family ties are the very source of the allegations. Specifically, Wagner is


accused of having sex multiple times with the minor M.O., entrusted to Wagner's care as a foster child and thus a household member.

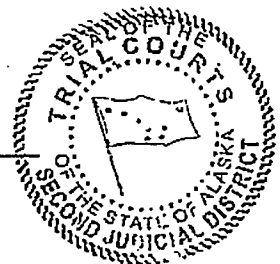
Furthermore, the court considered the weight of the evidence against Wagner. While examining the evidence, the court is not required to have evidence of the allegations presented beyond a reasonable doubt—the court only needs to determine probable cause, which is a lesser standard than beyond a reasonable doubt. Certainly, this case will rest in part on M.O.'s credibility. But, a jury will have other factors to consider as well: (1) whether Wagner allegedly had sex in a single instance, but multiple times with M.O.; and (2) whether, upon being alerted of M.O.'s allegations by his wife, Wagner allegedly fled to Oregon.

#### CONCLUSION:

For the foregoing reasons, given the nature and circumstances of the allegations here, the court finds that Wagner's ankle monitor proposal does not adequately ensure either appearance or protection of the public; nor does it adequately address any of the factors laid out in AS 12.30.011(b). Accordingly, Wagner's bail application is DENIED.

Dated in Nome, Alaska this 17<sup>th</sup> day of December, 2020.

  
Superior Court Judge  
Romano D. DiBenedetto



12/17/2020  
Entered by DA  
VJ